

STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION

IN THE MATTER OF:

DENISE JONES,

Complainant,

CHARGE No. 1991CF3680
EEOC No. 21B912609
ALS No. 10407

AND

NORTHROP ELECTRONICS
SYSTEM DIVISION,

Respondent.

ORDER

This matter comes before the Commission pursuant to a Recommended Order and Decision, the Complainant's Exceptions filed thereto, and the Respondent's Response to the Complainant's Exceptions.

The Illinois Department of Human Rights is an additional statutory party that has conducted state action in this matter. They are named herein as an additional party of record. The Illinois Department of Human Rights did not participate in the Commission's consideration of this matter.

Pursuant to 775 ILCS 5/8A-103(E)(1)&(3), the Commission has DECLINED further review in the above-captioned matter. The parties are hereby notified that the Administrative Law Judge's Recommended Order and Decision, entered on April 27, 2009 in the above-captioned matter, has become the Order of the Commission.

STATE OF ILLINOIS

Entered this 2 day of September 2009.

HUMAN RIGHTS COMMISSION

Commissioner Greg Simoncini

Commissioner Diane Viverito

Commissioner Munir Muhammad

STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION

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DENISE JONES,
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NORTHROP ELECTRONICS SYSTEMS
DIVISION,

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Respondent

CHARGE NO.: 1991CF3680
EEOC NO.: 21B 912609
ALS NO.: 10407

RECOMMENDED ORDER AND DECISION

This matter comes before the Commission following a public hearing that was conducted on September 15, 16, 17 and 18, 2003 at which both parties appeared and participated. Both parties filed post-hearing briefs, but only Respondent filed a reply brief. This matter is now ready for decision.

The Illinois Department of Human Rights is an additional statutory agency that has issued state actions in this matter. Therefore, the Department is an additional party of record. **Statement of the Case**

Complainant filed her Charge No. 1991CF3680 against Respondent, Northrop Electronics Systems Division, on June 15, 1991. The charge alleges that Complainant was denied a promotion due to her race, Black.

On March 26, 1998, the Department of Human Rights filed a complaint with the Commission on behalf of Complainant in which it alleged that Respondent failed to promote Complainant to the position of financial analyst (Grade 76) because of her race. Black, in violation of Section 102(A) of the Illinois Human Rights Act. On July 13, 1998, Respondent filed its Motion to Dismiss and To Strike Request for Injunctive Relief in lieu of a verified answer to the complaint. This Motion was denied on November 18, 1999 and the verified answer was filed on December 27, 1999. A contentious discovery period was completed on or before March 1.

2001 and a schedule was set for the filing of dispositive motions. Respondent's Motion for Summary Decision was filed on May 31, 2001 and Complainant filed her response on July 27, 2001, Respondent's reply was filed on August 17, 2001. The motion was denied by order on February 7, 2002, but Respondent filed a "motion to reconsider" on March 25, 2002. After this motion was fully briefed by the parties, it was denied on September 24, 2002. Respondent then filed its Supplemental Motion in Support of Its Motion for Reconsideration and Summary Decision in Its Favor on October 16, 2002. After being briefed, this motion, too, was denied on December 31, 2002. The joint pre-hearing memorandum was filed on April 18, 2003 and a supplement to the joint pre-hearing memorandum proposed by Respondent was filed and entered in the record on August 18, 2003. A final, amended joint pre-hearing memorandum was filed by the parties on September 12, 2003. The public hearing was held on September 15-18, 2003 and the final post-hearing brief was filed on January 16, 2004. This matter is now ready for decision.

Findings of Fact

1. Complainant, Denise Jones, filed her Charge No. 1991CF3680 with the Illinois Department of Human Rights on June 15, 1991, alleging that Respondent, Northrop Electronics Systems Division, failed to promote her because of her race, Black.
2. Complainant was first employed by Respondent in 1985 and was still employed there at the time of the public hearing in this matter. At the time relevant to this complaint, Complainant was employed in Respondent's finance department.
3. Complainant sought a promotion from Grade 74 to Grade 76 in 1990 and Respondent denied her request because she was not performing at a high enough level in her then-present position.
4. There is no evidence that Respondent failed to promote Complainant due to her race, Black.

5. There is no evidence that Respondent had a policy of automatically promoting any employee every two years and there is no evidence that white employees were, in fact, promoted "automatically" every two years while employees in any protected class were promoted much less frequently.

Conclusions of Law

- 1 Complainant is an "aggrieved party, and Respondent is an 'employer" as those terms are defined by the Illinois Human Rights Act, 775 ILCS 51103(B), 5/2-101(B)(b) and 2-102(0).
2. The Commission has jurisdiction over the parties and the subject matter of this action.
3. Respondent was Complainant's employer from 1985 through the date of the public hearing in this matter.
4. Complainant did not establish by a preponderance of the evidence that she was discriminated against by Respondent due to her race, Black, as a result of the disparate impact of the application of its promotion policy.
5. Complainant's presentation of evidence of the promotional histories of 10 white and 10 Black employees was insufficient to demonstrate the disparate impact of the application of Respondent's promotional policy within the pool of 112 employees assigned to the finance department and who held at least a bachelor's degree.
6. The charge and complaint in this matter should be dismissed with prejudice.

Discussion

Complainant's Claim of Disparate Impact

Complainant was first employed by Respondent in 1985 and continued to be employed by the company at the time of the public hearing in this matter. She worked in the finance department in a variety of capacities over time, and while employed by Respondent (and with

Respondent paying the expenses), earned both a master's degree and a CPA certificate. In 1990, Complainant was classified at Grade 74 and applied for promotion to Grade 76. It is undisputed that Complainant met the minimum requirements for promotion to Grade 76. However, she was denied the promotion at that time because her performance in Grade 74 was deficient. She was eventually promoted to Grade 76 in May, 1992.

As noted above, Complainant filed her charge with the Department of Human Rights in June, 1991. The complaint as filed by the Department on behalf of Complainant alleged that eight white employees of Respondent were promoted on an average of once every 2.06 years while Black employees were promoted once every 4.78 years. Because the allegations in the complaint alleged that Respondent treated white employees more favorably on average than it treated Black employees when applying its promotional policy, Complainant was required to prove by a preponderance of the evidence that the promotional policy of Respondent, which was neutral on its face with regard to race, in fact had a disparate discriminatory impact on Black individuals in general, and on her in particular, due to the manner in which it was applied.

The *prima facie* case for disparate impact discrimination is that the facially neutral policy has a "significant discriminatory impact" on the identified protected class. Quintanar and First Nationwide Financial Corporation, IHRC, 9210, May 6, 1999. In order to prove disparate impact, it is necessary for the Complainant to present statistical information that clearly illustrates the discriminatory effect of the facially neutral policy. It is not sufficient to merely cite the employment history of a complainant and other selected co-workers in the protected class juxtaposed against the histories of a small sample of persons not in the protected class. In this case, the relevant pool of employees was defined by Complainant as the 112 persons holding at least a bachelor's degree and the requisite departmental seniority employed in the finance department of Respondent. At the public hearing, Complainant presented testimony concerning the promotional experience of only 20 persons within the pool of 112.

Complainant asserts that Respondent's requirement for an employee to have two years experience in a position before being considered for promotion was in fact applied in such a manner that white employees were essentially "automatically" promoted every two years while Black employees received promotions only after significantly lengthier lapses of time. Because the pool of employees defined by Complainant was composed of just 112 persons, the only statistical analysis of Respondent's promotional policy that could produce a significant result would be an examination of all of them, not just a small, selective sampling. But at the public hearing, as noted above, Complainant only presented testimony concerning her conclusions regarding the alleged promotional histories of a total of 20 persons. 10 Black individuals (5 males and 5 females) and 10 white individuals (5 males and 5 females). The employment histories of the other 92 employees in the pool are not set out or otherwise discussed. According to Complainant, the 10 white individuals received a composite total of 20 promotions between 1990 and 1994 (*in its post-hearing brief, Respondent states that one of the stated promotions never occurred and another was from a staff to a managerial position and should not be counted; Respondent's Post-Hearing Brief, Paragraph 51*), while the 10 Black individuals received a total of 13 promotions during the same time period.

Respondent, however, asserts that Complainant's sample of white employees included mostly those who were among the highest achievers within the larger group of white employees. Complainant failed to file a reply brief and did not otherwise refute this assertion on the part of Respondent and there is no other evidence in the record that the individuals were chosen randomly or otherwise in a manner that would produce a scientifically valid result. Further, there is no mention of the promotional histories of the other 92 employees in the pool of 112 employees. In any event, the small sample provided is simply inadequate to establish by a preponderance of the evidence that application of Respondent's promotion policy created a disparate, discriminatory impact on Black employees, including Complainant, in the pool of 112.

Recommendation

It is recommended that the complaint and charge in this matter be dismissed with prejudice.

HUMAN RIGHTS COMMISSION

ENTERED:

April 27, 2009

BY: _____
DAVID J. BRENT
ADMINISTRATIV LAW JUDGE
ADMINISTRATIVE LAW SECTION